

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

ROBERT H. KELLY AND WIFE,	§	CIVIL ACTION NO.
MARY KELLY	§	
	§	
VS.	§	CIVIL ACTION NO. 1:07CV0137
	§	
D.B. INDUSTRIES, INC.	§	

**COMPLAINT FOR INTERVENTION SUBJECT TO AND WITHOUT WAIVING ITS
MOTION TO TRANSFER VENUE**

NOW INTO COURT, through undersigned counsel, comes Intervenor, ZURICH NORTH AMERICA (“Zurich”), and files this Complaint for Intervention, subject to and without waiving, its Rule 10 Joinder to Defendant’s Motion to Transfer Venue and represents that:

1.

Named Defendant-in-Intervention is:

(a) D.B. INDUSTRIES, INC.

2.

Prior to April 12, 2006, Intervenor, Zurich, had issued a policy of Workers’ Compensation insurance to Nabors Drilling USA, LP (“NDUSA”), the employer of Robert H. Kelly, a Plaintiff in the above-entitled and numbered action, insuring the said employer against liability under the Texas Workers’ Compensation Act for any loss or damages arising out of injury to its employees and servants in the course and scope of their employment. This insurance policy was in full force and effect at the time of the accident described in Plaintiffs’ Complaint herein.

3.

At all relevant times, NDUSA was a subscriber as that term is understood under the Texas Workers' Compensation Act.

4.

On or about April 17, 2006, Plaintiff, Robert H. Kelly, was in the course and scope of his employment with NDUSA when he was injured.

5.

As a result of the injuries received by Robert H. Kelly, pursuant to the provisions of the Texas Workers' Compensation Act and under the terms of the above-described policy, Intervenor began paying Plaintiff herein Workers' Compensation benefits, including medical and indemnity payments. Indemnity payments were calculated at a weekly rate of \$540.00 and totaled the sum of \$28,080.00 (with benefits continuing); and medical benefits were also paid in the amount of \$96,580.85 (with benefits continuing). These benefits and medical expenses were paid to or on behalf of Robert H. Kelly for injuries allegedly sustained by him as a result of the accident of April 17, 2006, as set forth in Robert H. Kelly's Original Complaint filed herein. In addition, Intervenor may be obligated to pay future medical expenses and compensation benefits to Plaintiff. Intervenor, by reason of such past and future payments, is herein subrogated to the rights of Plaintiff against any recovery which Plaintiff may make by means of this lawsuit. Intervenor herein seeks to recover an amount equal to the benefits, which Intervenor have paid in the past, at time of trial, and seek a credit in the amount of the net recovery made by Plaintiff toward any benefits which Intervenor may owe in the future. Intervenor asserts that the accident was caused by the negligence of Defendant-in-Intervention, D.B. INDUSTRIES, INC.

and Intervenor adopts the allegations of negligence set forth in Robert H. Kelly's Original Complaint.

6.

Intervenor is further interested in the subject matter of this suit as they are entitled to and now plead for their statutory credit for a recovery in excess of Intervenor's subrogation recovery made by the Plaintiff in this case pursuant to the Texas Workers' Compensation Act. Further, Intervenor intends to assert said credit toward any future obligation it may have to pay Workers' Compensation benefits and/or medical expenses to or on behalf of Plaintiff.

7.

Intervenor is entitled to preference and priority over Robert H. Kelly for any judgment rendered in favor of Robert H. Kelly and against Defendants, D.B. INDUSTRIES, INC.

8.

Intervenor is entitled to recover all compensation and medical benefits which have previously been paid or will be paid by Intervenor hereafter on behalf of Robert H. Kelly.

WHEREFORE, Intervenor prays that, after all due delays and proceedings are had, that Intervenor and Defendant's Motion to Transfer Venue is granted, and that there be judgment in favor of Intervenor and against Defendant-in-Intervention ordering D.B. INDUSTRIES, INC., to pay to Intervenor the amounts paid or legally to be paid in compensation benefits and medical expenses to or on behalf of Robert H. Kelly in preference and priority over any judgment rendered in favor of Robert H. Kelly.

Respectfully submitted,

/s/
Thomas J. Smith, T.A. (Attorney-in-Charge)
State Bar No. 00788934
Federal I.D. No. 17148
Lynne J. Shannon
State Bar No. 11059250
Kelly C. Hartmann
State Bar No. 24055631

OF COUNSEL:

GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH
1301 McKinney, Suite 1400
Houston, Texas 77010
Telephone: (713) 599-0700
Telecopier: (713) 599-0777

**ATTORNEYS FOR
ZURICH NORTH AMERICA**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served on the following known counsel of record by the Eastern District of Texas e-file system, or if counsel is not a registered user of the system, service is made by certified mail, return receipt requested on this 8th day of June, 2007.

Steven Carl Barkley, Esq.
Attorney at Law
3560 Delaware, Suite 305
Beaumont, Texas 77706

Matthew Childs, Esq.
Tekell, Book, Matthews & Limmer, L.L.P.
1 Houston Center
1221 McKinney, Suite 4300
Houston, Texas 77010-2015

/s/

Thomas J. Smith, T.A. (Attorney-in-Charge)
Lynne J. Shannon
Kelly C. Hartmann